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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

ROBERT G. VOKES, BEN D. HARMON, ALLAN M. HOFFMAN, EDWARD PIOTTER, ROBERT H. MOROZ, RALPH A. OLMOS,
Appellants,

vs.

CITY OF CHICAGO, a Municipal Corporation,
Appellee.

On Appeal from the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgments in Consolidated Appeals of the Supreme Court of Illinois entered on September 27, 1963, affirming judgments of the Municipal Court of Chicago and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the Supreme Court of Illinois is reported at 28 Ill. 2d 475, 193 N.E.2d 40, and is attached hereto as exhibit A.

Jurisdiction

The actions were commenced in the Municipal Court of Chicago by complaints charging the appellants with having violated Chapter 28, section 28-3 of the Municipal Code of Chicago. The complaints, which were in substantially identical form charged that the appellants did then and there violate the Municipal Code of Chicago by accepting in the City of Chicago a person for transportation for hire in a public passenger vehicle not licensed as such by said City. The appellants were each tried in the Municipal Court of Chicago, found guilty as charged and fined the sum of Sixty Dollars. Timely appeals were filed to the Supreme Court of Illinois. The cases were consolidated by the Supreme Court of Illinois for purposes of appeal. On September 27, 1963, the Supreme Court of Illinois entered judgments affirming the Municipal Court of Chicago. No petition for rehearing was filed. The Notice of Appeal to this Court was filed in the office of the clerk of the Supreme Court of Illinois on December 23, 1963.

The statuory provision believed to confer on this Court jurisdiction of the appeal is Title 28, United States Code, § 1257(2).

Cases believed to sustain the jurisdiction are: *Williams* v. *Bruffy*, 96 U.S. 176; *King Mfg. Co.* v. *City Council of Augusta*, 277 U.S. 100; *Jamison* v. *Texas*, 318 U.S. 413; *Independent Warehouses* v. *Scheele*, 331 U.S. 70; *Poulos* v. *New Hampshire*, 345 U.S. 395.

Statute Involved

The statute the validity of which is involved is a city ordinance, Chapter 28, Municipal Code of Chicago, Section 28-5.1 which is set forth in Appendix B annexed hereto. Other statutes (City ordinance) involved are Chapter 28, Section 28-3, of the Municipal Code of Chicago, the ordinance under which the appellants were charged, and Chapter 28, Municipal Code of Chicago, Sections 28-28.1, 28-2, 28-5, 28-6 and 28-32, all of which are set forth in Appendix B annexed hereto.

Question Presented

Does an ordinance of the City of Chicago which requires a corporate applicant for taxicab licenses to have its principal place of business within the City of Chicago, and which thus prevents a non-resident corporation from obtaining City of Chicago taxicab licenses, deny to such non-resident corporations due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

The facts in the case were found by the Supreme Court of Illinois as follows:

> By separate complaints filed in the municipal court of Chicago, Robert G. Vokes, Ben D. Harmon, Allan M. Hoffman, Edward Piotter, Robert H. Moroz, and Ralph A. Olmos, all taxi drivers, were charged with transporting passengers for hire without a proper license in violation of section 28—3 of Chicago's municipal code, and upon hearing each was adjudged guilty and fined the sum of $60. A constitutional question

being involved, the defendants have appealed directly to this court for review.

The facts in each case are virtually identical. The defendants were employed by either the Evanston Cab Company or the Skokie Red Top Cab Company, both being corporations maintaining a common radio dispatch office in Evanston. The taxicabs involved were licensed by either Evanston or Skokie, were regularly inspected for safety by the city of Evanston, and were insured against public liability. In each case a telephone call was received in the Evanston dispatch office requesting a taxi at a Chicago address. The driver picked up the passenger as requested, transported him to another location in Chicago, received his fare, and was then arrested by a Chicago police officer.

Section 28—2 of the chapter of Chicago's municipal code relating to public passenger vehicles makes it unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle for the transportation of passengers for hire unless the vehicle is licensed by the city of Chicago as a public passenger vehicle. An exception, and limitations on the exception, are then stated in section 28—3 as follows: "Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While said vehicle is in the city no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire, and a white card bearing the words 'Not For Hire' printed in black letters not less than two inches in height shall be displayed at the windshield of the vehicle. No person shall be solicited or accepted in

said vehicle for transportation from any place within the city. Any person in control or possession of said vehicle who violates any of the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense."

Section 28—5 relates to license applications, and it is provided in section 28—5.1 that all corporate applicants shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago, and that all other applicants shall be citizens of the United States residing and domiciled in the city. Remaining sections indicate that licenses must be applied for annually, and section 28—6 directs that the commissioner of public vehicles, upon receipt of an application, shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; and the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period.

How the Federal Questions Were Raised

The Federal questions involved in this case were raised in the trial court by post trial motion, under the practice of the Municipal Court of Chicago; they were presented in the brief of the appellants in the Supreme Court of Illinois and the Supreme Court of Illinois squarely decided the questions as follows:

Defendants' prime contention is that the ordinance, insofar as it requires corporate applicants to have

their principal place of business within the city of Chicago contravenes the equal protection and due process clauses of the fourteenth amendment to the Federal constitution, and section 2 of article II of the Illinois constitution which likewise ordains that no person shall be deprived of life, liberty or property without due process of law. It is their theory that the residence requirement is unrelated to the public good, and that it arbitrarily and unreasonably discriminates against those corporations not having their principal place of business in Chicago. The city, while denying the constitutional infirmities asserted, first contends that defendants, being only individual employees of the corporations to whom the licensing provisions apply, have no standing to challenge the validity of the ordinance on such ground. In this, however, the city is mistaken. Defendants' convictions and the fines levied against them can be justified and sustained only if ordinance provisions in question are valid and binding against their corporate employers. Moreover, having been arrested, convicted and fined because the corporate employers had not obtained licenses for their cabs, defendants are plainly persons aggrieved by the operation of the ordinance and therefore competent to challenge its constitutional validity. Cf *Huckaba* v. *Cox*, 14 Ill.2d 126; *Moran* v. *Zoning Board of Appeals*, 11 Ill.2d 374.

In determining the validity of the ordinance we may start with the established propositions that a taxi is a common carrier for hire which derives its income from the use of public streets, and that the power of municipalities to police such a business is derived from its power to regulate or prohibit the use of its streets for private gain. (See: *Weksler* v. *Collins*, 317 Ill. 132;

People ex rel. Johns v. *Thompson*, 341 Ill. 166; *Jackie Cab Co.* v. *Chicago Park District*, 366 Ill. 474) and by specific statutory authority to regulate taxicabs. (Ill. Rev. Stat. 1961, chap. 24, par. 11—42—6.) The power to exclude includes, for the most part, the power to permit upon condition and, as pointed out in *Weksler* v. *Collins*, 317 Ill. 132, 139, an occupation or business which may be carried on by permission will justify a degree of regulation not permissible in the case of an activity pursued as a matter of right.

The constitutional yardsticks to be applied to the present ordinance are also established beyond question. Neither the fourteenth amendment nor any provision of the Illinois constitution prevents the enactment of laws for the protection of the public health, safety, welfare or morals, neither do they prohibit legislative classifications reasonably calculated to promote or serve such public interests. (*City of Decatur* v. *Chasteen*, 19 Ill.2d 204; *Zelney* v. *Murphy*, 387 Ill. 492; *Morey* v. *Doud*, 354 U.S. 457, 1 L. ed. 2d 1485.) Rather, they invalidate only enactments that are arbitrary, unreasonable and unrelated to the public purpose sought to be attained, or those which, although reasonably designed to promote the public interest, effect classifications which have no reasonable basis and are therefore arbitrary. (*Stewart* v. *Brady*, 300 Ill. 425; *Keig Stevens Baking Co.* v. *City of Savanna*, 380 Ill. 303; *Charles* v. *City of Chicago*, 413 Ill. 428.) The reasonableness of a police regulation is not necessarily what is best but what is fairly appropriate under all circumstances. (*People ex rel. Johns* v. *Thompson*, 341 Ill. 166; *Sligh* v. *Kirkwood*, 237 U.S. 52, 59 L. ed. 835), and in like manner, a classification which has some reasonable basis is not unconstitutional because it is not

made with mathematical nicety or because in practice it results in some inequality. (*Morey* v. *Doud*, 354 U.S. 457, 1 L. ed. 2d 1485.) Measuring by these tests, it is our opinion that the ordinance requirement for corporate licensee to have their principal place of business in the city is not so oppressive or unreasonable as to violate the guaranty of due process of law, or so invidious a discrimination against corporations outside the city as to violate the guaranty of equal protection.

The Question is Substantial.

The Supreme Court of Illinois, in its decision in this case ignored not only the great body of law from other jurisdictions but also its own precedents.

The leading Illinois case is *City of Elgin* v. *Winchester*, 300 Ill. 214, 133 N.E. 205. In that case the City of Elgin had enacted an ordinance which provided as follows:

> Section 1. It shall be unlawful for any person to distribute or carry for the purpose of distributing, or to post or carry for the purpose of displaying the same, any handbill or advertisement or advertising material of any kind within the city of Elgin without a license to do so.
>
> Section 13. No license shall be required hereunder for the purpose of advertising home entertainments or sales by citizens of the City of Elgin if the person desiring the same shall first obtain a permit from the mayor to do so.

In holding the ordinance invalid and reversing the conviction of the defendant in that case, a New York resident, the Court said:

> • • • In our judgment, under the authorities, the ordinance is void as being discriminatory between

> residents and nonresidents as to the payment of license fees. A citizen of the city may procure a permit without the payment of a license fee, and distribute advertisements concerning sales by such citizens. Beyond question the ordinance permits local merchants to advertise by the distribution of circulars or pamphlets. A statute or ordinance which in imposing a license tax discriminates in favor of residents of a state or city and against non-residents of the same class is unconstitutional. (133 N.E. 205, 206)

In *Larson* v. *City of Rockford*, 371 Ill. 441, 21 N.E. 2d 396, the Supreme Court of Illinois had occasion to determine the validity of an ordinance of the City of Rockford which exacted license fees of persons maintaining and operating automatic vending machines for the sale of candy, peanuts, soft drinks, pop corn and gum. The ordinance required that persons to whom licenses were to be issued be either residents of the city or have a business address within the city. In holding that the ordinance was not discriminatory against nonresidents the Court said:

> The ordinance is not invalid because it requires licensees either to be residents of Rockford or to maintain a business address in that city. Arbitrary discrimination between residents and nonresidents in the issuance of licenses or fees charged will invalidate a municipal ordinance. (*City of Elgin* v. *Winchester*, 300 Ill. 214, 133 N.E. 205, 22 A.L.R. 1481), but the ordinance before us neither prohibits issuance of licenses to non-residents nor exacts a higher fee from nonresidents than from residents. (21 N.E. 2d 396, 398)

The court went on to discuss the fact that a city could require a business address within the city for purpose of inspection and receiving customer complaints. It is thus seen that the Rockford ordinance was far different in its residence requirements than the ordinance before the Court in these cases.

Similar decisions are numerous. In *People* v. *Bowen*, 11 Misc. 2d 462, 175 N.Y.S. 2d 125, the Court of Special Sessions of the City of New York, Appellate Part, had before it the validity of a section of the New York City Administrative Code which prohibited the issuance of licenses for sightseeing guides unless the applicant had been a resident of New York City for two years. In reversing the conviction of the defendants who were residents of Pennsylvania and were conducting a tour which originated and terminated in Philadelphia, for acting as sightseeing guides without a license, the Court said:

> In *Wormsen* v. *Moss*, 177 Misc. 19, 29 N.Y.S. 2d 798, the New York Supreme Court held that a law of the City of New York which restricted the granting of Masseur's licenses to persons who had been citizens of the United States for at least two years violated both the United States and the New York State Constitutions (U.S. Const. 14th Amend.; N.Y. Const. Art. 1, §§ 6, 11).
>
> In *Schrager* v. *City of Albany*, 197 Misc. 903, 99 N.Y.S. 2d 697, a city ordinance prohibited street vending without a license and only permitted the issuance of licenses to persons who had been residents of the city for at least six months. The residence requirement was held to be manifestly unconstitutional and invalid since it works a discrimination against nonresidents of the city * * * " (197 Misc. 903, at page 906, 99 N.Y.S. 2d 697, at page 700). The Court pointed out (197 Misc., page 906, 99 Misc. 2d page 700) "Regulations whose purposes are asserted to be in the public interest must be reasonable, adapted to cure a substantial evil and applicable to persons similarly situated. If they fail to meet those requirements courts have the duty to declare them unconstitutional."
>
> Unless residence within a city presents a clear-cut reasonable basis for distinction between persons seeking to pursue the same occupation within the city, a

> requirement of residence as a prerequisite to practising such occupation must fail. *Lang's Bakery* v. *City of Lockport*, 251 App. Div. 791, 298 N.Y.S. 167; *People* v. *Hervieux*, 134 Misc. 711, 236 N.Y.S. 129. Here we find no such basis; accordingly, we hold that the two years' residence requirement of Sec. B32-77.0 of the N. Y. City Administrative Code, as applied to these defendants, is invalid. *City of Watertown* v. *Rodenbaugh*, 112 App. Div. 723, 98 N.Y.S. 885. [175 N.Y.S. 2d 125, 127-128]

In *Jewel Tea Co.* v. *Town of Bel Air* (Md. Ct. of App. 1937) 192 A. 417 it was held that a court of equity could enjoin the enforcement of ordinances which prohibited unlicensed nonresidents from soliciting orders for sale of goods. The Court said:

> Both ordinances, Nos. 39 and 74, are void because they discriminate in favor of the resident business, and thus violate the Fourteenth Amendment to the Federal Constitution. In support of such a decision it is only necessary to refer to the opinion of this court by Judge Offutt in *Havre De Grace* v. *Johnson*, 143 Md. 601, 123 A. 65, and the numerous cases digested in 61 A.L.R. 337. Discussion would be superfluous and repetitious. • • •

In *Whipple* v. *City of South Milwaukee*, 261 N.W. 235, the Supreme Court of Wisconsin held invalid an ordinance of the City of South Milwaukee which in effect required a license to be obtained by hawkers and peddlers of nonresident businesses, in that case bakery and creamery firms. The ordinance did not require such a license of hawkers and peddlers of resident firms. The court went on at great length to analyze the various precedents but the following is indicative of the reasoning:

> Consequently, by reason of that exemption in favor of mercantile houses located in the city of South Milwaukee, the impediment or burden which it was pro-

posed to impose by those prohibitory provisions upon the plaintiffs and others similarly situated, is not equally applicable to the pursuits of all engaged in the same acts under like circumstances and conditions. Therefore those provisions are discriminatory as against the plaintiffs and others similarly situated, and by reason of that discrimination, they are in violation of section 1, art. 1, Wis. Const., and section 1, Amend. 14, U. S. Const. By that amendment, as the court said in *Barbier* v. *Connolly*, 113 U. S. 27, 31, 5 S. Ct. 357, 359, 28 L. Ed. 923, it was "undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoilation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights"; that, in respect thereto, "all persons should be equally entitled to pursue their happiness, and acquire and enjoy property," and "no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances"; and that "no greater burdens should be laid upon one than are laid upon others in the same calling and condition." Likewise, with that amendment and section 1, art. 1, Wis. Const., in mind, we said, in *Christoph* v. *City of Chilton*, 205 Wis. 418, 421, 237 N.W. 134, 135: "That both the Constitutions of the state of Wisconsin and of the United States condemn laws which grant special privileges to a favored class, cannot be doubted. That the very spirit of our institutions is against the granting of special privileges to a favored class is indeed elementary." And also that: "While the legislature, in proper cases, clearly has the right to classify persons, property, occupations, or industries, it must always to borne in mind that the equal protection of the laws is guaranteed, and that, if any classification made by a statute grants to one class rights or privileges which are denied to another class under the same or substantially similar conditions, it offends against the principle of equal protection of the law."

The next case which we wish to call to the attention of the court is *City of New Brunswick* v. *Zimmerman*, 3 Cir., 1935, 79 F. 2d 428. In that case the City of New Brunswick had an ordinance regulating barbers which provided that no application for a license to conduct a barber shop could be considered unless the applicant had been a resident of the County of Middlesex for a period of one year immediately preceding the making of the application. The District Court enjoined the enforcement of the ordinance and the city appealed. The United States Circuit Court of Appeals affirmed the District Court saying:

> * * * The Fourteenth Amendment provides that no state shall make or enforce any law which abridges the privileges or immunities or citizens of the United States, nor deny them equal protection of the laws. It is our conclusion that the ordinance requirement as to residence had but one purpose, namely, that of discriminating in favor of residents of the county of Middlesex and citizens of the state of New Jersey and against nonresidents of the county and citizens of other states. We conclude that the ordinance requirement of one year's residence as a prerequisite to the right to conduct a barber shop within the county of Middlesex, state of New Jersey, is unreasonable, discriminatory, and in direct violation of the Fourteenth Amendment to the Constitution of the United States. *Williams* v. *McCartan*, (D.C.) 212 F. 345. [79 F. 2d 428, 429]

The last and probably, the closest case on the facts, is the opinion mentioned in the *Jewel Tea Co.* case discussed above, *Mayor and City Council of Havre de Grace* v. *Johnson*, (Md. Ct. of App., 1923) 123 Atl. 65. Because of its importance in this case we take the liberty of quoting at length from that opinion:

> The single question presented by this appeal is whether ordinance No. 298 of the city of Havre de Grace is a valid enactment. .

The ordinance is entitled:

"An ordinance to regulate, control, and restrict the use of the streets, lanes, and alleys of the city of Havre de Grace by automobiles carrying passengers for hire,"

—and was approved on August 21, 1922. In part it provides:

"Section 1. Be it enacted and ordained by the mayor and city council of Havre de Grace, Maryland, that it shall be unlawful for any driver or operator of an automobile carrying passengers for hire (except as hereinafter provided), to solicit or accept passengers for transportation for hire on any of the streets, lanes and alleys of the city of Havre de Grace, except Union avenue and Revolution street west of Union avenue.

"Sec. 2. Be it further enacted and ordained that the provisions of this ordinance shall not apply to the operators or drivers of automobiles who are actual and bona fide residents of the city of Havre de Grace, and who have resided therein for a continuous period of six months."

* * *

The complainant contends that the ordinance was and is void, because it is unconstitutional and that that being true the police officials of Havre de Grace in executing it threatened to deprive him of rights or privileges granted by the state to him for which he had fully paid. He contended that he had no adequate legal remedy for such loss as he might sustain as a result of the defendants' acts, and he therefore asked that they be restrained from—

"interfering with, arresting and fining your orator, his agents, servants and employees, from soliciting and accepting passengers for transporting for hire, in the three cars mentioned and referred to in this bill of complaint on any of the streets, lanes, and alleys of said city of Havre de Grace."

In their answer the defendants say:

"(1) That the defendant, the mayor and city Council

of Havre de Grace, is a municipal corporation whose charter is codified as sections 276 to 402, inclusive, of chapter 680 of the Acts of 1916; that by the provisions of said charter the said city is empowered and charged with the duty of passing ordinances "to protect and preserve the health of the citizens and the property, rights and privileges of the city, and, for the preservation of peace and good order, securing persons and property from violence, danger or destruction; that ordinance numbered 298, referred to in the bill of complaint, was passed by said mayor and city council by virtue of and in pursuance of the authority contained in said charter.

"(2) That the said city of Havre de Grace has two principal thoroughfares running through said town, to wit, Union avenue and Washington street, the principal business section of said city being located on Washington street; that during the months of April and September of each year, while races are being conducted by the Harford Agriculture & Breeders' Association, at the race track near said city, there is a large transient population in said city; that, during the months aforesaid, there also come to said city, from all parts of this and other states, a large number of irresponsible drivers of cars for hire; that before the passage of Ordinance No. 298 these cars would gather in the principal business section of Washington street in such numbers that said street would become practically closed to all other traffic, seriously interfering with the orderly progress of traffic in said street, and that, as the result of the keen competition among the drivers of said hiring cars, much disorder and rowdyism resulted, to the disturbance of the peace of the neighborhood and the annoyance of all the residents thereof; and that because of said condition said city was put to the expense of several additional officers in an effort to control the situation, but without result.

"(2½) That said ordinance was passed to correct the condition above set forth and for no other purpose."

They also deny that the ordinance is unconstitutional or void for any reason.

* * *

It was assumed at the hearing that the ordinance was adopted in the exercise of power conferred by the Legislature, Acts 1916, c. 680, "section" 308, and we will for the purpose of this opinion only, and without so deciding, also assume that the Legislature did delegate to the city of Havre de Grace the power to regulate the business of automobile hiring on the streets of Havre de Grace and that Ordinance No. 298 was adopted in the attempted exercise of that power, and will deal only with the reasonableness of that ordinance.

The first consideration suggested by an examination of the ordinance is that it is not a regulation at all, but a prohibition; the second is that it only excludes persons who reside beyond the corporate limits of Havre de Grace. Whether the municipality would under any circumstances have the right to absolutely prohibit persons from accepting passengers for hire on its streets, as it has attempted in this ordinance to do, need not, in view of our conclusion upon the other question, be discussed. And the question is thus brought down to this: Did the ordinance unreasonably and unlawfully discriminate against the appellee and others in like situation by prohibiting them, and other persons not residing in Havre de Grace, from operating an automobile hiring business on certain streets of that town? In dealing with that question the learned judge who decided the case below said:

"The city of Havre de Grace is not a sovereign state, but is a part of Harford county, and its streets, lanes, and alleys are part of the public highways of the state of Maryland and open to all citizens of the state on equal terms for the purpose of travel, and, as the plaintiff is a citizen of Maryland, there is no necessity either to discuss or pass upon the rights of aliens or nonresidents in similar cases. When, how-

ever, these public highways are used for business purposes, such as that in which the plaintiff is engaged, different rules in some measure apply. The city, under its charter, has the right to pass proper ordinances to preserve order on the public highways, and to see that the legitimate use of the highways by the general public is not interfered with by persons seeking to use them for private purposes, and that, when used for business purposes, they are so used as not to disturb the public peace and comfort."

And with that reasoning we entirely agree.

It certainly cannot be seriously argued that an ordinance which forbids nonresidents of Havre de Grace from transacting on its streets the same business which they permit residents to transact there is a reasonable regulation designed in the interest of the public health or welfare, because we certainly cannot assume as a matter of law that the operation of an automobile hiring business by a nonresident of Havre de Grace would, because of his nonresidence, constitute a greater peril to the health or welfare of that town than it would if operated by a resident; a more reasonable and probable view would be that it was intended to confer the monopoly of a profitable business upon residents of the town. But whatever its purpose may have been there can be no doubt but that the ordinance is discriminatory and unreasonable, and that the municipality had no power to adopt it.

* * *

It is undoubtedly true, as stated in *State* v. *Shapiro*, 131 Md. 171, 101 Atl. 705, Ann. Cas. 1918E, 196, that the state is not bound to observe a definite rule of uniformity in the enactment of license laws, so long as it—

"does not conflict with the constitutional right to the equal protection of the laws, or to due process of law, if the prescribed regulations operate equally and uniformly upon the class, and within the area affected, and their limitations are not clearly unreasonable."

But the converse is equally true that if a statute is unreasonable, or deprives persons affected by it of the equal protection of the law, it is void. And in this case we think the statute does have that effect.

The state licensed and authorized persons securing licenses under class F, § 141, art. 56, C. P. G. L. of Md., to engage in the business of hiring automobiles on any of the highways of the state, and expressly provided that the fee exacted for that license should be in lieu of all other taxes, fees, or charges except taxes upon the machines as personal property.

The ordinance, however, confines and restricts the right of exercising the privilege thus conferred on certain of the public streets and highways in Havre de Grace to residents of that city, and excludes all other members of the class, to wit, persons licensed under the provisions of section F from engaging in that business on such streets. Such a discrimination is in our opinion clearly unreasonable, and the ordinance is for that reason void.

For the reasons stated the order appealed from will be affirmed.

Order affirmed, with costs to the appellee.

Other authorities are numerous and are collected in 61 A.L.R. 337 and 112 A.L.R. 63. In view of the overwhelming weight of authority, the Chicago taxicab ordinance which prohibits the issuance of licenses to corporate applicants which do not have their principal place of business within the City of Chicago is void and the defendants who are drivers of a taxicab company which has its principal place of business outside the City of Chicago cannot be found guilty under the ordinance.

Respectfully submitted,

CHARLES A. BELLOWS
Attorney for Appellants

APPENDIX A

Opinion of the Supreme Court of Illinois

Mr. JUSTICE DAILY delivered the opinion of the court:

By separate complaints filed in the municipal court of Chicago, Robert G. Vokes, Ben D. Harmon, Allan M. Hoffman, Edward Piotter, Robert H. Moroz, and Ralph A. Olmos, all taxi drivers, were charged with transporting passengers for hire without a proper license in violation of section 28—3 of Chicago's municipal code, and upon hearing each was adjudged guilty and fined the sum of $60. A constitutional question being involved, the defendants have appealed directly to this court for review.

The facts in each case are virtually identical. The defendants were employed by either the Evanston Cab Company or the Skokie Red Top Cab Company, both being corporations maintaining a common radio dispatch office in Evanston. The taxicabs involved were licensed by either Evanston or Skokie, were regularly inspected for safety by the city of Evanston, and were insured against public liability. In each case a telephone call was received in the Evanston dispatch office requesting a taxi at a Chicago address. The driver picked up the passenger as requested, transported him to another location in Chicago, received his fare, and was then arrested by a Chicago police officer.

Section 28—2 of the chapter of Chicago's municipal code relating to public passenger vehicles makes it unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle for the transportation of passengers for hire unless the vehicle is licensed by the city of Chicago as a public passenger vehicle. An exception, and limitations on the exception,

are then stated in section 28—3 as follows: "Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While said vehicle is in the city no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire, and a white card bearing the words 'Not For Hire' printed in black letters not less than two inches in height shall be displayed at the windshield of the vehicle. No person shall be solicited or accepted in said vehicle for transportation from any place within the city. Any person in control or possession of said vehicle who violates any of the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense."

Section 28—5 relates to license applications, and it is provided in section 28—5.1 that all corporate applicants shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago, and that all other applicants shall be citizens of the United States residing and domiciled in the city. Remaining sections indicate that licenses must be applied for annually, and section 28—6 directs that the commissioner of public vehicles, upon receipt of an application, shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; and the financial ability of the applicant to render safe and comfortable transportation service, to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period.

Defendants' prime contention is that the ordinance, insofar as it requires corporate applicants to have their prin-

cipal place of business within the city of Chicago, contravenes the equal protection and due process clauses of the fourteenth amendment to the Federal constitution, and section 2 of article II of the Illinois constitution which likewise ordains that no person shall be deprived of life, liberty or property without due process of law. It is their theory that the residence requirement is unrelated to the public good, and that it arbitrarily and unreasonably discriminates against those corporations not having their principal place of business in Chicago. The city, while denying the constitutional infirmities asserted, first contends that defendants, being only individual employees of the corporations to whom the licensing provisions apply, have no standing to challenge the validity of the ordinance on such ground. In this, however, the city is mistaken. Defendants' convictions and the fines levied against them can be justified and sustained only if ordinance provisions in question are valid and binding against their corporate employers. Moreover, having been arrested, convicted and fined because the corporate employers had not obtained licenses for their cabs, defendants are plainly persons aggrieved by the operation of the ordinance and therefore competent to challenge its constitutional validity. Cf. *Huckaba* v. *Cox*, 14 Ill.2d 126; *Moran* v. *Zoning Board of Appeals*, 11 Ill.2d 374.

In determining the validity of the ordinance we may start with the established propositions that a taxi is a common carrier for hire which derives its income from the use of public streets, and that the power of municipalities to police such a business is derived from its power to regulate or prohibit the use of its streets for private gain. (See: *Weksler* v. *Collins*, 317 Ill. 132; *People ex rel. Johns* v. *Thompson*, 341 Ill. 166; *Jackie Cab Co.* v. *Chicago Park District*, 366 Ill. 474.) and by specific statutory authority to

regulate taxicabs. (Ill. Rev. Stat. 1961, chap. 24, par. 11—42—6.) The power to exclude includes, for the most part, the power to permit upon conditions and, as pointed out in *Weksler* v. *Collins*, 317 Ill. 132, 139, an occupation or business which may be carried on by permission will justify a degree of regulation not permissible in the case of an activity pursued as a matter of right.

The constitutional yardsticks to be applied to the present ordinance are also established beyond question. Neither the fourteenth amendment nor any provision of the Illinois constitution prevents the enactment of laws for the protection of the public health, safety, welfare or morals, and neither do they prohibit legislative classifications reasonably calculated to promote or serve such public interests. (*City of Decatur* v. *Chasteen*, 19 Ill.2d 204; *Zelney* v. *Murphy*, 387 Ill. 492; *Morey* v. *Doud*, 354 U.S. 457, 1 L.ed. 2d 1485.) Rather, they invalidate only enactments that are arbitrary, unreasonable and unrelated to the public purpose sought to be attained, or those which, although reasonably designed to promote the public interest, effect classifications which have no reasonable basis and are therefor arbitrary. (*Stewart* v. *Brady*, 300 Ill. 425; *Keig Stevens Baking Co.* v. *City of Savanna*, 380 Ill. 303; *Charles* v. *City of Chicago*, 413 Ill. 428.) The reasonableness of a police regulation is not necessarily what is best but what is fairly appropriate under all circumstances. (*People ex rel. Johns* v. *Thompson*, 341 Ill. 166; *Sligh* v. *Kirkwood*, 237 U.S. 52, 59 L. ed. 835,) and in like manner, a classification which has some reasonable basis is not unconstitutional because it is not made with mathematical nicety or because in practice it results in some inequality. (*Morey* v. *Doud*, 354 U.S. 457, 1 L. ed. 2d 1485.) Measuring by these tests, it is our opinion that the ordinance requirement for corporate licensees to have their principal place of

business in the city is not so oppressive or unreasonable as to violate the guaranty of due process of law, or so invidious a discrimination against corporations outside the city as to violate the guaranty of equal protection.

By its very nature the taxicab industry directly and substantially provokes considerations of public safety and welfare. Its vehicles are constantly on the city streets, day and night, and the members of the public who utilize them must place almost a blind trust in the fitness of their equipment and the competence of their drivers. Thus, not only does the operation of the business call for measures to protect others using the streets and highways, but also for regulations which insure the highest degree of safety for its passengers. To attain these ends the ordinance here has conditioned the granting of an annual license on such factors as the competence and character of the owners and drivers, the use of equipment which will provide safe, convenient and comfortable transportation, and the financial ability of the owners to maintain their equipment and to respond in damages for tortious acts. There can be little doubt that these requirements, as well as the investigative and inspection provisions of the ordinance designed to see that they are met, are proper police measures reasonably related to the public purposes sought to be attained. In our opinion the requirement that corporate licensees have their principal place of business in the city is so intertwined with the foregoing provisions as to be itself a reasonable and nondiscriminatory exercise of the police power.

If corporations licensed to operate taxis in the city of Chicago have no place of business there and do not maintain their records or equipment there, the functions of investigation, inspection and supervision required in the public interest would be exceedingly difficult if not impossible

to completely and adequately perform. This is particularly true when we consider the vast number of suburban towns and villages encircling the city, and the circumstance that Chicago investigators and inspectors, once outside the territorial limits of the city, would be without authority to act or to require compliance with the ordinances involved. When the question has arisen before, this court has held that the difficulty of inspection is a reasonable basis for classification, (*Keig Stevens Baking Co.* v. *City of Savanna*, 380 Ill. 303; *Stearns* v. *City of Chicago*, 368 Ill. 112,) and we believe the same result obtains in this case. Nor does the circumstance that the cabs involved here were inspected and supervised in Evanston and Skokie, respectfully, have the effect of making Chicago's requirement oppressive or discriminatory. Since the degree of regulation necessary in the public interest may differ from city to city, depending upon the size of the municipality and the local problems involved, control of the use of the streets and the other public purposes to be served are best achieved by permitting those cities, in which a corporate licensee seeks to do business, to themselves authorize and supervise the activities being carried on within their own boundaries, rather than to rely upon the inspection and supervision exercised by another municipality.

Further, it is also in the public interest to have the corporate officers and records available locally in the event of complaints, loss or litigation. (Cf. *Larson* v. *City of Rockford*, 371 Ill. 441.) Otherwise persons aggrieved or injured would be put to the difficult task of tracking down responsible parties and the beneficent provisions of the ordinance in such respect could be unduly delayed if not lost. For these reasons we find no merit in defendants' constitutional objections.

By isolating certain language of section 28—3 of the ordinance, and by ignoring other language, defendants argue that the prohibition against unlicensed cabs soliciting within the city of Chicago applies only to the owners rather than the drivers, and also that the solicitation prohibition is made to apply only to taxis which come into Chicago to discharge a passenger accepted outside the city limits, as distinguished from taxis which come into the city empty and there accept a passenger in the first instance. Upon these bases defendants contend that they were not proved guilty of violating the ordinance. Neither point is well taken. As to the first, the prohibition is made to apply to "any person in control or possession of said vehicle," and clearly has application to its driver. As to the second, it is axiomatic that a statute or ordinance must be read as a whole to ascertain its meaning, (*Pascal* v. *Lyons*, 15 Ill.2d 41,) and when that is done here it is manifest that it was the legislative intent to prohibit all unlicensed cabs from soliciting business within the city limits, regardless of the manner or purpose for which they entered the city.

Based in part on the foregoing contention the defendants next assert, for the first time, that the complaints against them failed to state a cause of action. However, this contention fails in two respects. Not only did the pleadings contain such information as was reasonably necessary to inform defendants of the charges against them, but their failure to raise such an objection in the trial court forecloses them from raising it on review. *Gustafson* v. *Consumers Sales Agency, Inc.*, 414 Ill. 235; Ill. Rev. Stat. 1961, chap. 110, par. 42(3).

Finally, through the office of their reply brief, defendants attack the ordinance as being a restraint on interstate commerce in violation of section 1 of the Sherman

Anti-Trust Act, (15 U.S.C.A. § 1,) the Federal antitrust legislation. This question, however, has no source in the facts of these cases and is far afield from the issues presented and decided in the trial court, the only ones which are properly before us for review.

For the reasons stated, the judgments of the municipal court of Chicago are affirmed.

Judgments affirmed.

APPENDIX B

Ordinance Provisions Involved

Chapter 28, Municipal Code of Chicago:

28.1 Definitions.) As used in this chapter:

"Cabman" means a person engaged in business as proprietor of one or more taxicabs.

"Chauffeur" means the driver of a public passenger vehicle licensed by the city of Chicago as a public chauffeur.

"City" means the city of Chicago.

"Coachman" means a person engaged in business as proprietor of one or more livery vehicles, sightseeing vehicles or terminal vehicles.

"Commissioner" means the public vehicle license commissioner, or any other body or officer having supervision or public passenger vehicle operations in the city.

"Council" means the city council of the city of Chicago.

PUBLIC PASSENGER VEHICLES

"Livery vehicle" means a public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.

"Person" means a natural person, firm, association or corporation in his own capacity and not in a representative capacity, the personal pronoun being applicable to all such persons of any number or gender.

"Public passenger vehicle" means a motor vehicle as defined in the Motor Vehicle Law of the State of Illinois, which is used for the transportation of passengers for hire, excepting in operation of a metro-

politan transit authority or public utility under the Laws of Illinois.

"Sightseeing vehicle" means a public passenger vehicle for hire principally on sightseeing tours at a charge or fare per passenger for each tour fixed by agreement in advance or for hire otherwise at a charge for each vehicle per trip fixed by agreement in advance.

"Taxicab" means a public passenger vehicle for hire only at lawful rates of fare recorded and indicated by taximeter in operation when the vehicle is in use for transportation of any passenger.

"Taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.

"Terminal vehicle" means a public passenger vehicle which is used exclusively by a coachman under contract with railroad or steamship carriers for the transfer of their passengers and hand baggage enroute in interstate travel between railroad terminals and steamship docks pursuant to through route published tariffs.

28-2. License required.) It is unlawful for any person other than a metropolitan transit authority or public utility to operate a motor vehicle, or for the registered owner thereof to permit it to be operated, for the transportation of passengers for hire within the city, except on a funeral trip, unless it is licensed by the city as a public passenger vehicle.

28-3. Interurban operations.) Nothing in this chapter shall be construed to prohibit any public passenger vehicle from coming into the city to discharge passengers accepted for transportation outside the city. While said vehicle is in the city no roof light or other special light shall be used to indicate that the vehicle is vacant or subject to hire, and a white card bearing the words "Not For Hire" printed in black letters not less than two inches in height shall be displayed at the wind-

shield of the vehicle. No person shall be solicited or accepted in said vehicle for transportation from any place within the city. Any person in control or possession of said vehicle who violates any of the provisions of this section shall be subject to arrest and fine of not less than fifty dollars nor more than two hundred dollars for each offense.

28.5. Application.) Application for public passenger vehicle licenses shall be made in writing, signed and sworn to by the applicant or, if applicant is a corporation, by its duly authorized agent, upon forms provided by the commissioner. The application shall contain the full name, Chicago business address and residence address of the applicant, the business telephone number of the applicant, the manufacturer's name, model, length of time in use, horsepower and seating capacity of the vehicle which applicant will use, if a license is issued, and the class of public passenger vehicle license requested. If the applicant is affiliated or to become affiliated or identified with any person by the color scheme of vehicles, trade name or emblem, telephone number, radio dispatch system, or service agreement, the application shall contain the full name, Chicago business address and telephone number of said affiliate, and a copy of the agreement with said affiliate, if any, shall be filed with the application.

28-5.1. Qualifications.) All corporate applicants for public passenger vehicle licenses shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago, and all other applicants shall be citizens of the United States residing and domiciled in the City of Chicago. No person shall be qualified for license, if affiliated or identified with any person, by agreement or otherwise, as described in section 28-5, unless said affiliate is a corporation organized or qualified to do business under the laws of Illinois and has its principal place of business in Chicago or is a citizen of the

United States residing and domiciled in the city of Chicago, registered with the commissioner, and has complied with all the provisions of this ordinance and all orders, rules and regulations adopted or issued by the commissioner governing the business of such affiliates.

28-6. Investigation and issuance of license.) Upon receipt of an application for a public passenger vehicle license the commissioner shall cause an investigation to be made of the character and reputation of the applicant as a law abiding citizen; the financial ability of the applicant to render safe and comfortable transportation service and to maintain or replace the equipment for such service and to pay all judgments and awards which may be rendered for any cause arising out of the operation of a public passenger vehicle during the license period. If the commissioner shall find that the application, and all other statements and documents required to be filed with said application have been properly executed, and that the applicant is qualified to pursue the occupation of a cabman or coachman, the commissioner shall issue to him and in his name a license for each public passenger vehicle applied for, to terminate on the 31st day of December following the date of issue, provided that each said vehicle is registered in applicant's name and is in safe and proper condition at the time the license is issued.

28-32. Penalty.) Any person violating any provisions of this chapter for which a penalty is not otherwise provided shall be fined not less than $5.00 nor more than $100.00 for the first offense, not less than $25.00 nor more than $100.00 for the second offense during the same calendar year, and not less than $50.00 nor more than $100.00 for the third and succeeding offenses during the same calendar year, and each day that such violation shall continue shall be deemed a separate and distinct offense.

APPENDIX C

Judgment Orders of the Supreme Court of Illinois Appealed From.

Judgment Order as to Appellant, Robert Vokes

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matter and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Municipal Court of Chicago aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

Judgment Order as to Appellant Ben Harmon

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matter and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition

of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Municipal Court of Chicago aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

Judgment Order as to Appellant Allan Hoffman

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matter and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Municipal Court of Chicago aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

Judgment Order as to Appellant Edward Pioter

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matter and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Municipal Court of Chicago aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

Judgment Order as to Appellant Robert Moroz

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matter and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Municipal Court of Chicago aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN

FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

Judgment Order as to Appellant Ralph Olmos

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matter and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Municipal Court of Chicago aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

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FILED
MAR 9 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 855

ROBERT G. VOKES, ET AL.,
Appellants,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

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THE GUTHROP-WARREN PRINTING COMPANY, CHICAGO [illegible] 56

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IN THE

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ROBERT G. VOKES, ET AL.,

Appellants;

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

Appellee, pursuant to Rule 16(1)(b)(c) of the Revised Rules of the Supreme Court of the United States, moves that the appeal be dismissed on the ground that it does not present a substantial federal question and further because the judgment rests on an adequate non-federal basis; alternatively, appellee moves that the final judgment of the Supreme Court of Illinois be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

ARGUMENT.

In Illinois municipalities may license and regulate taxicabs (Ill. Rev. Stat. 1963, chap. 24, par. 11-42-6) and may regulate the use of streets (Ill. Rev. Stat. 1963, chap. 24, par. 11-80-2) and traffic thereon (Ill. Rev. Stat. 1963, chap. 24, par. 11-80-20).

Each city and village has adopted its own local ordinance licensing and regulating the operation of taxicabs within their own municipalities. Appellants are employees of the Evanston and Skokie Cab Companies engaged in the business of transporting passengers for profit over the public streets. The Chicago ordinance prohibits appellants from operating their taxicabs over Chicago streets without a license (Municipal Code of Chicago, Section 28-2). However, appellants may enter Chicago with a passenger and discharge such passenger in Chicago, after which appellants may not solicit or accept passengers within Chicago (Municipal Code of Chicago, Section 28-3).

Appellants contend that their constitutional rights have been violated because they were arrested in Chicago where they were engaged in operating their taxicabs for profit conveying passengers from a point within Chicago to a destination within Chicago. They were operating solely within Chicago and had not entered the City for the purpose of discharging passengers accepted for transportation outside the City.

Appellants are not challenging those provisions of the Chicago ordinance which led to their arrest, *i.e.*, that they were operating unlicensed taxicabs over the streets of Chicago for profit. Rather, they are attacking an entirely separate provision of the ordinance, *viz.:* the portion of

the ordinance relating to corporate applicants for a Chicago license which provides, in part (Municipal Code of Chicago, Section 28-5.1):

> "All corporate applicants * * * shall be organized or qualified to do business under the laws of Illinois and have their principal places of business in the city of Chicago * * *."

Appellants argue that this requirement is discriminatory against Illinois corporations which do not have a Chicago address and that, therefore, appellants should not have been found guilty of violating ordinance provisions which prohibit them from operating unlicensed vehicles over Chicago streets. Appellants contend that to require corporate applicants to have their principal places of business in the municipality which licenses them is a violation of constitutional guarantees of due process and equal protection of the laws.

The court below answered appellants' contentions and reviewed the authorities, both *pro* and *con*, and concluded that the ordinance provisions in question were a reasonable exercise of the police power. (*City of Chicago* v. *Vokes*, 28 Ill. 2d 475, 193 N. E. 2d 40.) It would be repetitious for us to employ the same arguments here and in the interest of brevity we adopt the opinion of the court below as our argument.

With one exception (and the exception sustains our position, not appellants'), none of the authorities relied upon by appellants are relevant to the issue before the Court. The courts have uniformly rejected as unconstitutional any arbitrary discrimination against non-residents. On the other hand, the courts have sustained legislation required under the police power for the protection of local citizens. The latter is the situation in the case at bar.

In *City of Elgin* v. *Winchester*, 300 Ill. 214, 133 N. E. 205

(1921), an ordinance was held to be unconstitutional as unreasonable and arbitrary. In that case, Elgin adopted an ordinance prohibiting the distribution of advertisements in the city without first obtaining a license so to do. A bond of $300 was required of each applicant and a fee of $2 per day for each person employed was charged. However, residents of Elgin were not required to obtain a license if the mayor issued them a permit. A traveling salesman from New York distributed pamphlets advertising Jell-O products and solicited orders for such products. The Illinois court held this to be an arbitrary discrimination without any redeeming features. Indeed, none were advanced.

Larson v. *City of Rockford*, 371 Ill. 441, 21 N. E. 2d 396 (1939), involved an ordinance licensing automatic vending machines for the sale of candy, peanuts, soft drinks, popcorn and gum. The ordinance provided for the issuance of licenses upon evidence (p. 443):

> "* * * that the applicant, if an individual, or the person in charge of the business, if it is a firm or corporation, is a responsible person of good character and reputation having a residence or business address in the city of Rockford."

Suit was brought by an individual and also by a corporation. In sustaining the ordinance the Illinois court distinguished the arbitrary discriminatory aspects condemned in the *City of Elgin* case and said (pp. 445, 446):

> "The ordinance was adopted by the city council * * * for the protection of the public * * *. Where the council reasonably exercises its legislative power over subjects properly within its legitimate field, the requirement will be upheld. * * * [T]he city council might reasonably have believed that public safety and health would be promoted by requiring operators * * * to maintain a place where inspectors * * * might communicate with them * * * and where customers might

> register complaints and receive adjustments. * * * Under such circumstances, we believe the council was warranted in requiring every operator to establish a * * * business address in the city for the protection of customers and to facilitate enforcement of the ordinance."

Thus, the test is whether the legislation under attack is a reasonable exercise of legislative judgment for the protection of the public or whether it is an arbitrary expression of legislative power enacted solely to discriminate in favor of residents. The court below reviewed in patient detail the many cogent reasons why the "place of business" requirement was reasonable (28 Ill. 2d 475, pp. 478-482) and concluded that there was no merit to appellants' constitutional objections.

Authorities other than Illinois decisions are equally inapplicable to the facts in the case at bar. *People* v. *Bowen*, 175 N. Y. S. 2d 125, 11 Misc. 2d 462 (Court of Special Sessions of City of New York, Appellate Part, 1st Dept., 1958) held invalid an ordinance making two years residence in the city a prerequisite to application for a license as a sightseeing guide as applied to persons conducting an interstate tour. The court held that the two-year requirement served no purpose and was therefore unreasonable.

Jewel Tea Co. v. *Town of Bel Air*, 192 Atl. 417 (Md. 1937), involved an ordinance which made it unlawful for any person not a resident to solicit orders from residents of the town without having a license so to do. Jewel Tea sought an injunction restraining the enforcement so that its salesmen could solicit orders for articles to be shipped in from Washington, D. C. No regulatory features were contained in the ordinance and it was held to be arbitrary and invalid.

Whipple v. *City of South Milwaukee*, 261 N. W. 235 (Wis. 1935), is another instance (like *City of Elgin* v. *Winchester*,

300 Ill. 214, discussed above) of the cases upon which defendants rely. In *Whipple* (as in *City of Elgin*) the ordinance complained of provided for a license fee, but its terms were inapplicable to residents. Although defendants quote extensively from *Whipple*, it is thus proved to be distinguishable from the case at bar.

City of New Brunswick v. *Zimmerman*, 79 F. 2d 428 (3rd Cir. 1935), is similar to *People* v. *Bowen*, 175 N. Y. S. 2d 125, discussed above, where the ordinance required a year's residence before a barber's license could be applied for. It is completely foreign to the issues in the case at bar.

Mayor and City Council of Havre de Grace v. *Johnson*, 123 Atl. 65 (Md. 1923), is described by defendants as "the closest case on the facts" and defendants quote at length from the case. Again, however, defendants rely upon an ordinance substantially different from the regulatory ordinance in the case at bar. In the *Havre de Grace* case the ordinance prohibited entirely the operation of taxicabs on certain streets of the municipality, but the ordinance was inapplicable to "operators or drivers of automobiles who are actual and bona fide residents of the city * * * and who have resided therein for a continuous period of six months."

The annotations upon which appellants rely are similarly vulnerable. 61 A. L. R. 337 is an annotation following *Ex Parte Irish*, 121 Kan. 72, 250 Pac. 1056, 61 A. L. R. 332 (1926), another instance (like *City of Elgin* v. *Winchester*) where a license fee was imposed upon non-residents, but not upon residents. 112 A. L. R. 63 is an annotation following *Hinebaugh* v. *James*, 119 W. Va. 162, 192 S. E. 177, 112 A. L. R. 59 (W. Va. Court of Appeals, 1937), a case in which the court *sustained* the denial of a license to operate as a distributor of non-intoxicating beer to anyone who had not been a four-year resident. Neither set of facts is applicable to the case at bar.

Appellants are well aware of the provisions of the Chicago ordinance. They are not seeking, as they would have this Court believe, the right to be licensed. Such would be anathema to them. They are already licensed in their own municipalities, just as Chicago taxicab operators are licensed by Chicago. Appellants may come into Chicago to discharge passengers accepted outside of Chicago, just as Chicago taxicab operators may enter their municipalities to discharge passengers.

What appellants are seeking is the right to operate unlicensed taxicabs within the territorial limits of the City of Chicago, in competition with licensed taxicabs. Appellants want to pick up fares in Chicago and take them to destinations in Chicago. Provisions of the Chicago ordinances regulating taxicabs have been substantially the same for many, many years. Presumably, similar ordinances exist and are enforced in the municipalities where appellants are licensed to operate.

Appellants' conduct was undoubtedly inspired by their corporate employers who have filed a separate suit under Federal anti-trust laws, which suit has been dismissed. *Evanston Cab Co. v. City of Chicago*, 325 F. 2d 907 (7th Cir. 1963). In the *Evanston Cab Co.* suit, identical constitutional arguments were rejected, the court there approving the decision of the Illinois court in the case at bar.

Independent of the taxicab licensing ordinance, the City of Chicago has for many years limited the number of taxicabs that may operate on its streets. The courts have sustained the right of the City to limit or restrict the number of cabs which are to be operated on the streets and has enjoined the issuance of additional licenses until hearings are conducted to determine the need for more taxicabs (*Yellow Cab Co. v. City of Chicago*, 396 Ill. 388, 397). The present ordinance (Municipal Code of Chicago, chap. 195A) was enacted subsequent to extensive public hearings (*Yel-*

low Cab Co. v. City of Chicago, 23 Ill. 2d 453, 456) and limits taxicab licenses in the city to 4600. If appellants are permitted to operate in the City of Chicago, then the contract rights of those who now hold licenses are violated and their business threatened. The validity of the limiting ordinance has been sustained by the court and, consequently, appellants cannot operate in defiance of the ordinance thereby increasing the number of taxicabs on the streets of Chicago and destroying the business of those legally licensed under the ordinance.

In addition to upholding the ordinance limiting the number of taxicabs which may operate in Chicago, the court has also held that Chicago residents may not compel the issuance of licenses to them (*People ex rel. Hafer v. Flynn*, 13 Ill. 2d 368). Thus, residents and non-residents are in the same position—neither can obtain licenses because the number of taxicabs which may operate in the city has been restricted to a certain number. To permit more would frustrate the limiting ordinance and expose the city to litigation for not adhering to its own ordinance.

CONCLUSION

We respectfully submit that the appellants present no substantial question for the decision of this Court, and that the judgment of the Supreme Court of Illinois should be affirmed, or, alternatively, that the appeal should be dismissed.

Respectfully submitted,

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